



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF KLIMENKO v. RUSSIA

(Application no. 11785/02)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Klimenko v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mr A. KOVLER,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 December 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11785/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Gennadiy Ivanovich Klimenko on 9 April 2001.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 November 2005 the Court decided to communicate the application to the Government. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in the town of Taganrog.

1. Main set of proceedings

5. On 10 July 2000 the Taganrog Town Court (“the Town Court”, Таганрогский городской суд) granted the applicant's claim for recovery of 42,900 Russian roubles (“RUR”) which he had lent to a private company

and awarded him the interest of RUR 50,543. The applicant's action in respect of the second defendant, a private person, was rejected.

6. The judgment, in its part relating to the award of interests, was quashed by the Rostov Regional Court ("The Regional Court", *Ростовский областной суд*) on appeal on 27 September 2000 and remitted at first instance.

7. On 14 March 2001 the Town Court rendered a new judgment in the applicant's favour. The court decided that the private company was to pay the applicant RUR 86,937.60 in respect of the accrued interest. In addition the court ruled that the co-defendant, a private person, was to be held vicariously liable for the debts of the private company to the applicant in the total amount of RUR 129,837.60.

8. The judgment was not appealed against and on 25 March 2001 it came into force.

2. Supervisory review proceedings

9. On 6 June 2002 the Presidium of the Rostov Regional Court, acting upon the protest lodged by its President, quashed the judgments of 10 July 2000 and 14 March 2001 as well as the decision of 27 September 2000 and remitted the case at first instance. In particular, the court noted that the factual findings of the first-instance court had been erroneous and in breach of the relevant procedural rules.

3. Fresh examination of the case at first instance

10. By judgment of 10 November 2002 the Town Court freshly examined the case and granted the applicant's claims in full. The court ruled that the private company was to pay the applicant RUR 42,900 in respect of the principal debt and RUR 86,937.60 in respect of the accrued interest. The court also decided that the co-defendant, the private person, was to be held vicariously liable for the entirety of the debts of the private company to the applicant in the total amount of RUR 129,837.60.

11. The judgment of 10 November 2002 was upheld by the Rostov Regional Court on appeal on 6 February 2003.

4. Other episodes

12. It appears that the applicant was unsuccessful in a few sets of civil litigation against various third persons who had allegedly failed to re-pay their debts. He also tried unsuccessfully to prosecute these persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

13. The applicant complained that the quashing under supervisory review procedure of the judgments of 10 July 2000 and 14 March 2001 as well as the decision of 27 September 2000 violated his right to a fair trial guaranteed by Article 6 § 1 of the Convention and his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1. These Articles, in so far as relevant, provides as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

14. The Government submitted that on 6 June 2002 the Presidium of the Rostov Regional Court acted in accordance with the domestic law and procedure, that it quashed the court decisions in the applicant's case because the first instance court had made erroneous factual findings in breach of the relevant domestic law. The Government contended that the application for supervisory review had been lodged in order to correct the judicial error and, therefore, in the interests of prevention of violations of rights and legal interests of other persons. They further noted that as a result of the subsequent examination of the applicant's claim the courts had granted the entirety of the applicant's claims and that the fresh award had been identical to the original one. Accordingly, there had been no breach of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

15. The applicant contested the Government's submissions and maintained the initial complaints.

16. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. The parties' submissions on the merits of the complaint are similar to those on the admissibility.

1. Article 6 § 1 of the Convention

18. The Court first notes that the contractual dispute regarding the debt owed to the applicant by a number of third persons was of a pecuniary nature and indisputably concerned a civil right within the meaning of Article 6 § 1 of the Convention.

19. The Court observes that the issue of the present case is whether the supervisory review procedure permitting a final judgment to be quashed can be considered compatible with Article 6 and, more specifically, whether on the facts of the present case the principle of legal certainty was respected.

20. The Court finds that this case is similar to the case of *Ryabykh v. Russia*, cited above, where it was said, in so far as relevant to the instant case:

“51. ... the Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question...

54. The Court notes that the supervisory review of the judgment ... was set in motion by the President of the Belgorod Regional Court – who was not party to the proceedings ... As with the situation under Romanian law examined in *Brumărescu*, the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.

55. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as

being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official."

21. Furthermore, the Court has found in this respect in the judgment *Sovtransavto Holding v. Ukraine*, (no. 48553/99, § 77, ECHR 2002-VII):

"...judicial systems characterised by the objection (protest) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention, read in the light of *Brumărescu* ..."

22. Turning to the facts of the present case, the Court notes that by two judgments dated 10 July 2000 and 14 March 2001 respectively and the decision of 27 September 2000 the domestic courts granted the applicant's claims against a few third persons and awarded him certain amounts. After these court decisions in the applicant's favour had become final and binding, the President of the Rostov Regional Court brought an application for their supervisory review. On 6 June 2002 the Presidium of the Rostov Regional Court quashed the said decisions on the grounds that the first instance court had erroneously established the facts in the case.

23. The Court further notes that as a result of a fresh determination of the applicant's case, his claims were granted in full by the first instance judgment of 10 November 2002, as upheld on appeal on 26 February 2003. The Court considers, however, that this fact did not by itself efface the effects of legal uncertainty he had to endure after the court decisions in his case had been quashed (see *Ryabykh*, cited above, § 49, and *Roseltrans v. Russia*, no. 60974/00, § 27, 21 July 2005).

24. Having regard to the circumstances of the present case, the Court does not find any reason for departing from its aforementioned judgments and considers that there has been a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicant's case.

2. Article 1 of Protocol No. 1

25. The Court notes that by judgment of 10 July 2000, as upheld on appeal on 27 September 2000, and judgment of 14 March 2001 the Taganrog Town Court awarded the applicant RUR 129,837.60 as a principal debt and interests from two private co-defendants. Thereafter these decisions were quashed by way of supervisory review and as a result of the fresh determination of the case on 10 November 2002 the Taganrog Town

Court again awarded the applicant these amounts from the same co-defendants.

26. The Court observes that the applicant's claims were granted in full and that the applicant did not seek any additional interest payments in respect of the period between the supervisory review and the fresh determination of the case at first instance.

27. Having regard to the circumstances of the present case, the Court does not consider it necessary to rule on the question where there has been a violation of Article 1 of Protocol No. 1 (see *Zasurtsev v. Russia*, no. 67051/01, §§ 53-55, 27 April 2006).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant also complained under various Convention provisions about the unsuccessful outcome of court proceedings in other episodes. Having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

29. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

31. The applicant claimed 3,000 euros (EUR) in damages.

32. The Government submitted that the applicant had failed to substantiate and itemise his claims and that they should therefore be rejected.

33. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, and rejects the remainder of the applicant's claims as unsubstantiated.

B. Costs and expenses

34. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court.

35. The Government submitted that the receipts presented by the applicant to substantiate his legal costs were invalid because the applicant failed to present a written agreement between him and his counsel.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs for the proceedings before the Court.

C. Default interest

37. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the supervisory review of 6 June 2002 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 500 (five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President